

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:)	Group Art Unit: 3751
)	
BALL)	Examiner: Robert M. Fetsuga
)	
Serial No.: 10/732,726)	Confirmation No.: 2017
)	
Filed: December 10, 2003)	<u>DECLARATION OF WILLIAM T. BALL</u>
)	<u>PURSUANT TO 37 C.F.R. §1.131</u>
Atty. File No.: 5564-152)	
)	
For: <i>"Method and Apparatus for</i>)	
<i>Assembling and Sealing Bathtub</i>)	
<i>Overflow and Waste Water Ports"</i>)	

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I, William T. Ball declare as follows:

1. I am currently employed by WCM Industries, Inc., which has an interest in the above application. WCM Industries, Inc. is comprised of Woodford Manufacturing ("Woodford") that manufactures and sells yard hydrants, wall hydrants and wall faucets and WATCO Manufacturing ("Watco") that manufactures and sells bath drains and bathtub products.

2. I am the inventor of the subject matter above-identified U.S. Patent Application Serial No. 10/732,726, ("the '726 application") filed December 10, 2003, which is a continuation-in-part of U.S. Patent Application Serial Nos. 10/229,533, ("the '533 application") filed August 28, 2002, now U.S. Patent No. 6,675,406, which is a continuation of abandoned 09/593,724 ("the '724 application"), filed June 13, 2000. I am the sole inventor of the subject matter disclosed and claimed in the '724 application, the '726 application and the '533 application

3. This Declaration is being submitted in connection with prosecution activities for the instant application. More specifically, this Declaration is submitted pursuant to 37 CFR § 1.131 in response to an Office Action dated December 9, 2008 in which U.S. Patent No. 6,192,531 to Fritz et al. ("Fritz") having a filing date, and effective prior art date, of December 1, 1999, was cited under 35 USC § 103(a) as rendering Claims 11, 12, 14 & 21-23 obvious in combination with Swiss Patent No. CH 346187 to Gebert ("Gebert"). In that Office Action, the Examiner also combined Fritz and Gebert with U.S. Patent No. 5,745,931 to Ball ("Ball '931") and U.S. Patent No. 5,890,241 to Ball ("Ball '241") to find Claims 16-20 unpatentable.

3. This Declaration is submitted pursuant to 37 CFR § 1.131 also in response to the Office Action dated December 9, 2008 in which U.S. Patent No. 6,618,875 to Oropallo et al. ("Oropallo") having a filing date, and effective prior art date, of March 28, 2002, was cited pursuant to 35 USC § 103(a) as rendering Claims 11, 12, 14 & 21-23 obvious in combination with Gebert and Fritz.

5. Upon information and belief, the claimed invention was conceived prior to December 1, 1999. I hereby declare that I conceived the invention at least about October 1999. I recall the conception of the invention as it generally coincided with my birthday of October 10, my move from Kansas City, MO and my transition from Watco to Woodford as Vice President of Engineering.

6. Upon information and belief, after I discussed the concept, then referred to the Schedule 40 Overflow Elbow and later referred to the Innovator, with Mr. Bill Carlson, a designer/drafter employed by Woodford, in at least November of 1999.

7. Upon information and belief, Mr. Carlson refined aspects of the concept and first concept drawings were completed on December 7, 1999. Exhibit A is a copy of engineering drawings of one embodiment of the claimed invention provided to show that work was being done on embodiments of the invention as early as December 7, 1999.

8. Upon information and belief, embodiments of the present invention were refined and alternate embodiments were conceived after the original conception date listed above. Exhibit B is provided to show one alternative embodiment of the present invention that was invented at least about February of 2000.

9. Upon information and belief, in late winter or spring of 2000, WCM Industries asked Zarley, McKee, Thomte, Vorrhees and Sease, P.L.C. to prepare a patent application related to my inventions disclosed in the instant application, the '724 application and the '533 application. Preparation of U.S. Patent Application Serial No. the '724 application, from which the instant application enjoys priority, began on June 5, 2000.

10. Upon information and belief, the '724 application was filed on June 13, 2000.

11. Upon information and belief, the '724 application was abandoned in favor of the '533 application that was filed on August 28, 2002, which claims priority to the '724 application.

12. Upon information and belief, U.S. Patent No. 10/222,062, which discloses and claims similar subject matter to that of the instant application was filed August 16, 2002.

13. Upon information and belief, U.S. Patent No. 10/674,862, which discloses and claims similar subject matter to that of the instant application was filed September 30, 2003.

14. Upon information and belief, the instant application was filed on December 10, 2003. The instant application discloses and claims inventions that were disclosed in the '533 application and the '724 application, and, thus, enjoy the filing date of the '724 application and the date of conception of the inventions disclosed in the '724 application.

15. The foregoing statements and attached exhibits establish a conception date before the filing date of Fritz and Oropallo and diligence between that conception date and the constructive reduction-to-practice date, or the filing date of the '724 application from which the claims of the above-identified application enjoy priority. That is, in light of the foregoing I affirmatively assert that I was in possession of the subject matter disclosed and claimed in the above-identified prior to the filing date of either Fritz or Oropallo. I also assert that I, and WCM Industries, Inc., the assignee of the above-identified invention, have been diligent in seeking patent protection for the embodiments of the invention disclosed and claimed in the instant application and those related thereto as evidenced by the filing of related U.S. patent applications described above.

16. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that the statements were made with the knowledge that willful false statements and the like, so made, are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the subject application or any patent issuing thereon.

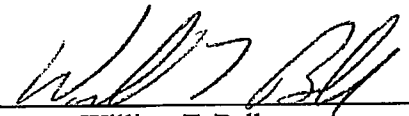
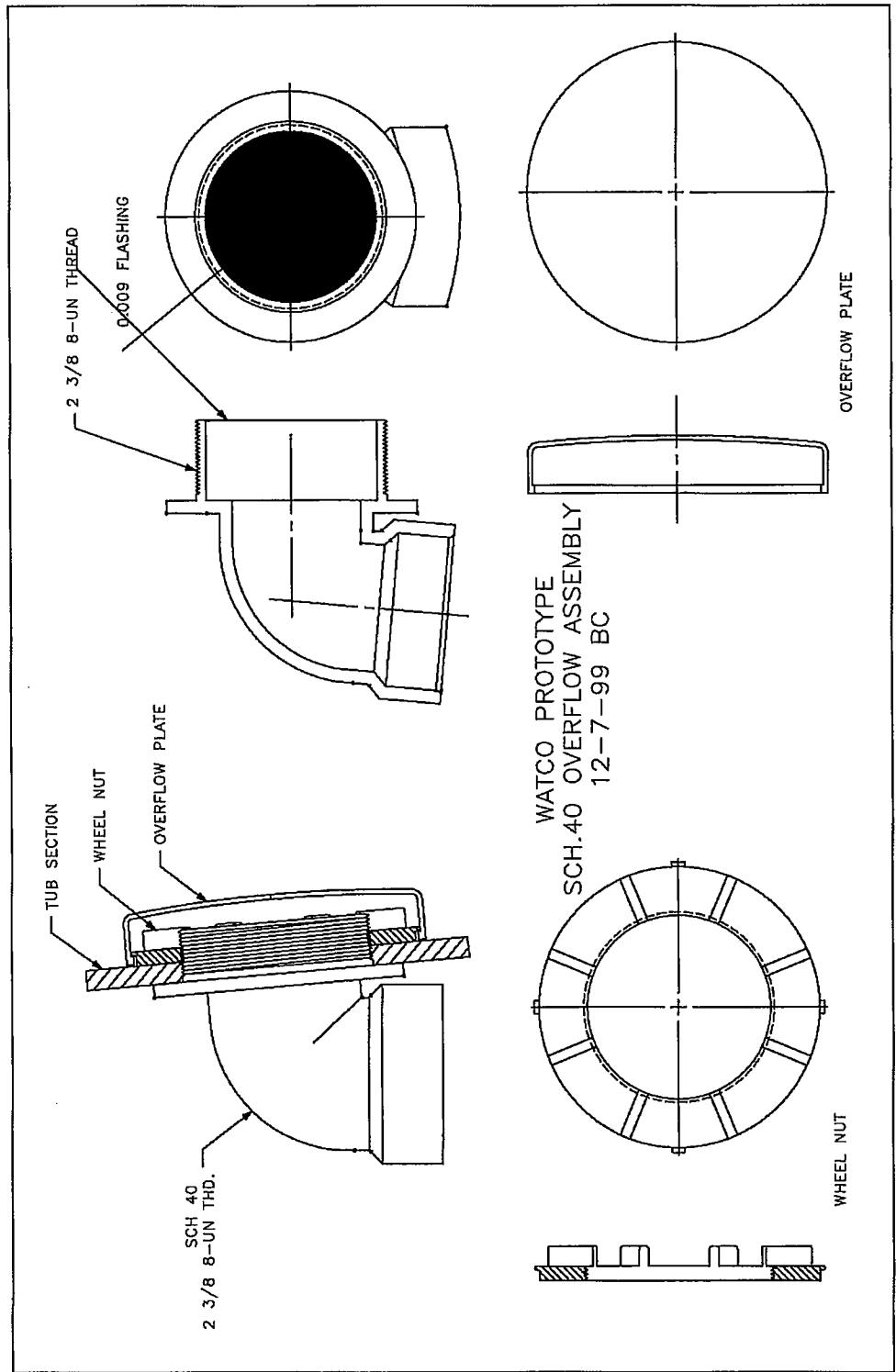
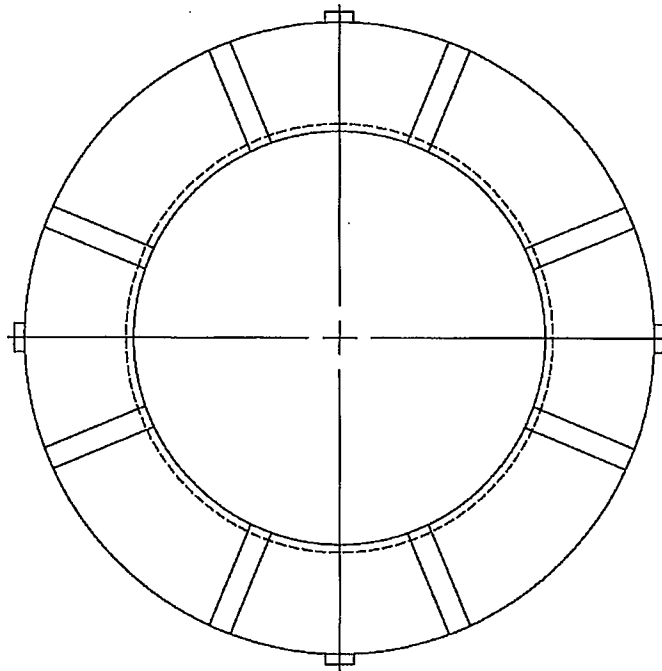
By:  Date: 6/9/09
William T. Ball

Exhibit A



NAME	WHEEL NUT		SCALE	1:1	WATCO MFG. CO.	PART NO.	WO_0003
FOR	SCH. 40 OVERFLOW (PROTOTYPE)		DRAWN		REVISION	BY	DATE
MAT'L	X		A		BC	XXXX	12-7-99
			B				
			C				
			D				
TOLERANCE UNLESS SPECIFIED DECIMALS ± .010 TWO PLACE ± .003 THREE PLACE ± 1/64 FRACTIONS ± 1/2 ANGLES SURFACE TEXTURE 63 ✓							
WCM INDUSTRIES, INC. COLORADO SPRINGS, COLORADO							



OVERFLOW PLATE

FOR SCH. 40 OVERFLOW (PROTOTYPE)

MAT'L X

WCM INDUSTRIES, INC.
COLORADO SPRINGS, COLORADO

UNLESS SPECIFIED

DECIMALS ± .010
TWO PLACE ± .003
THREE PLACE ± 1/64
FRACTIONS ± 1/2
ANGLES 63°

SURFACE TEXTURE 63

1:1



NO.

WU_UUU4

REVISION	BY	CH	EC	DATE
DRAWN	BC		XXX	12-7-99
A				
B				
C				
D				

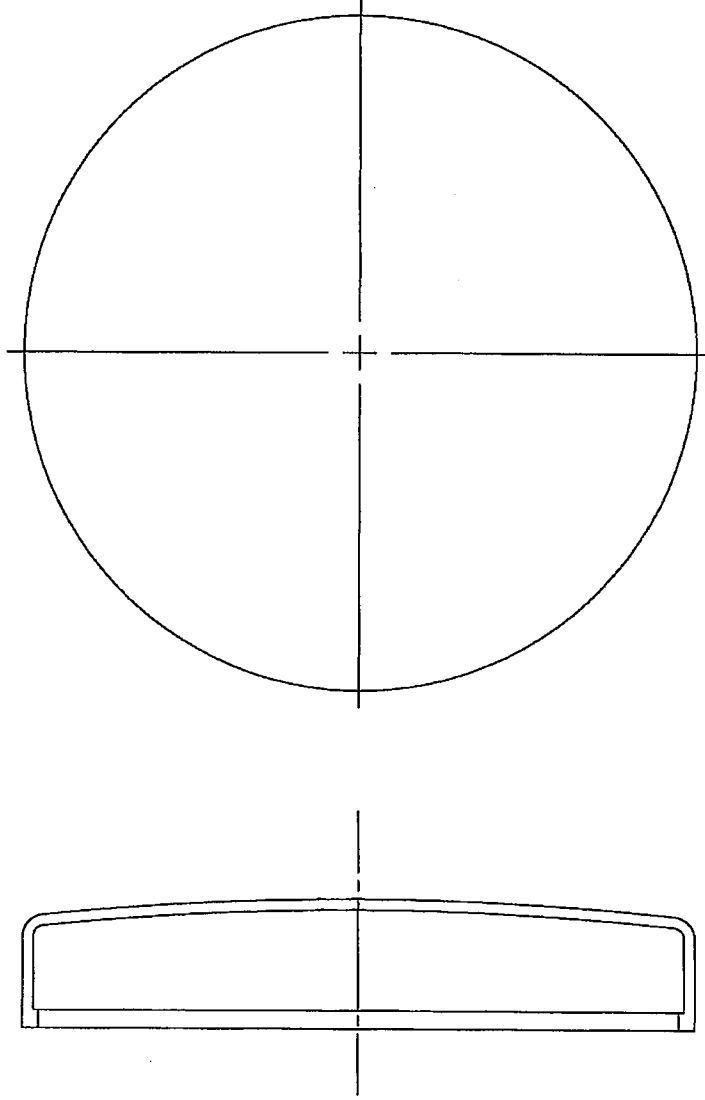
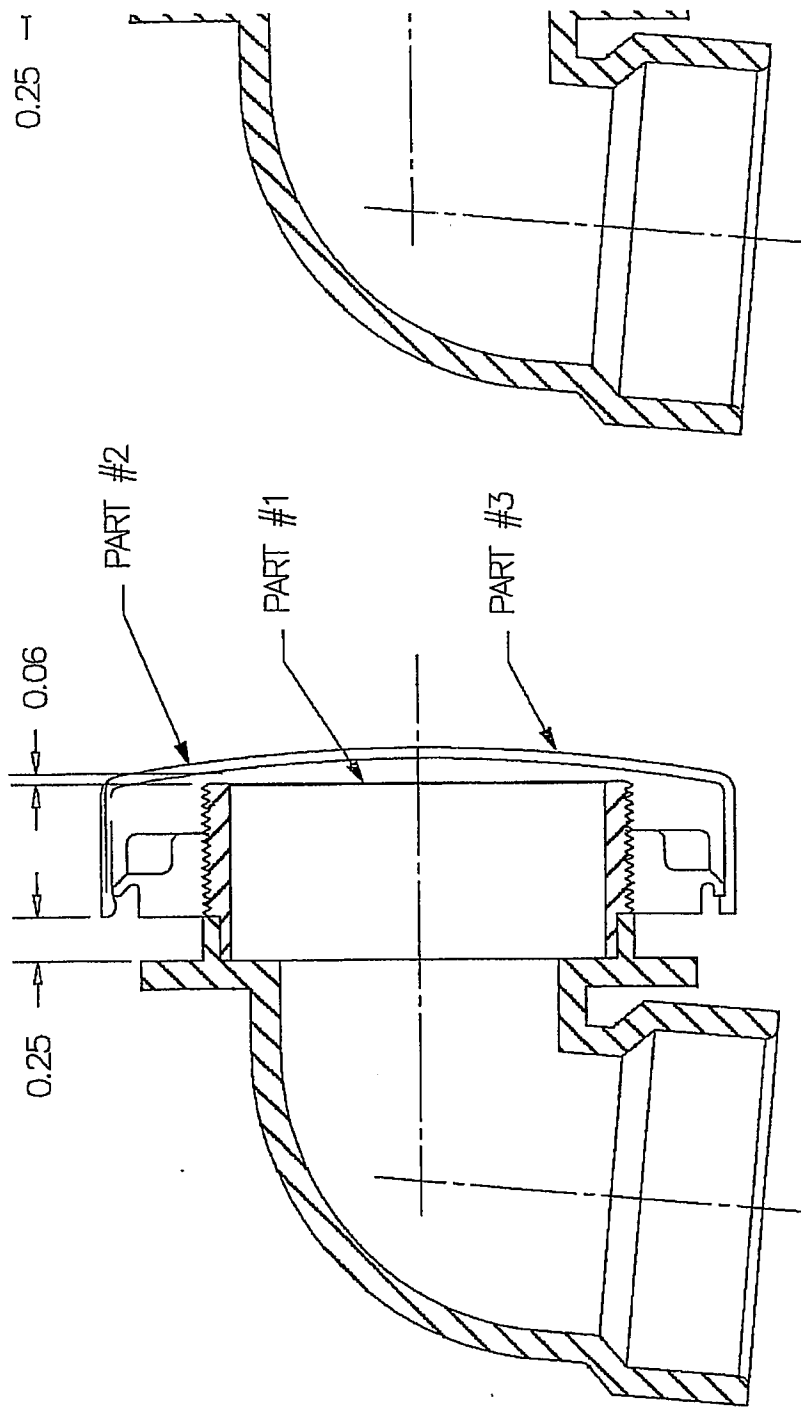
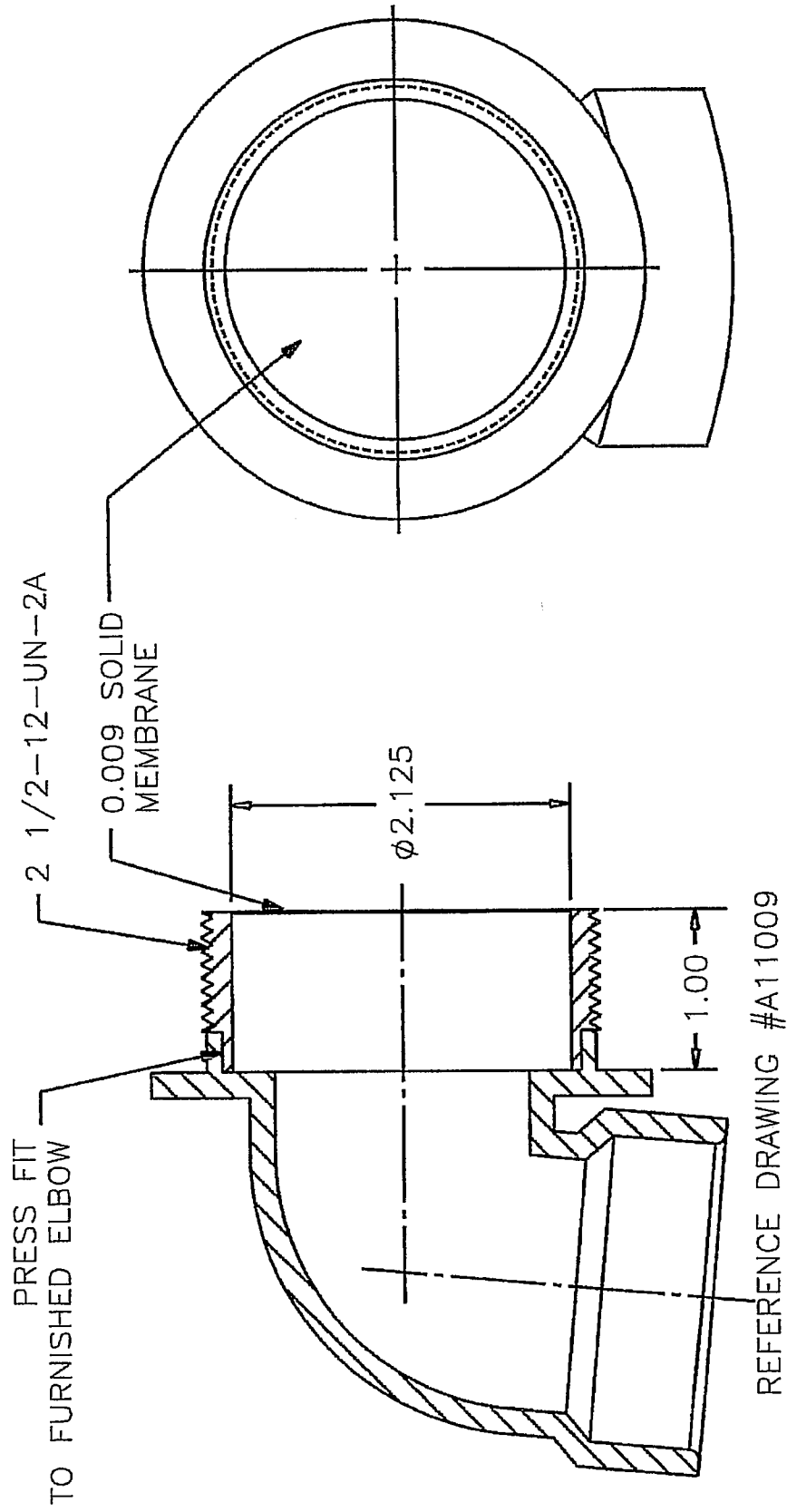


Exhibit B

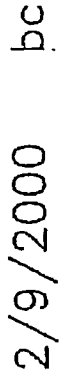


WATCO
OVERFLOW ELBOW PROTOTYPE
2/9/2000 bc

OVERFLOW
2/9/



WOODFORD
PART #1
2/14/00



2/9/2000 bc.